IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.738 OF 2006

Marico Limited and another .. Petitioners
v/s.
Union of India and others. .. Respondents

Mr.Gaurav Joshi with Ms.Rajani Divkar i/by M/s.Little & Co. for the petitioners.

Mr.R.V.Desai, Senior Counsel with Mr.H.V.Mehta for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 21ST APRIL, 2006.

P.C.

On 16th March, 2006, we passed the following order:

"After having heard Mr.D.B.Shroff, the learned senior counsel for the petitioners and Mr.H.V.Mehta, the learned counsel for respondent Nos.1 to 4, we are of the prima-facie opinion that encashment of the bank guarantee dated 9th October, 2003 by the respondent No.2 is grossly arbitrary and high-handed.

2. The first petitioner, to meet the export obligation of the advance licence dated 11th March, 2002 for import of coconut oil, had exported 26 consignments of coconut between 27th March, 2002 and 6th August, 2003. From Mumbai Port, 4 consignments were exported while from JNPT, port 1 consignment was exported. Remaining 21 consignments were exported through Petrapole in West Bengal.

3. As per the conditions of the advance licence, the first petitioner was required to submit evidence of discharge of export obligation within 30 days from the

date of expiry of period of obligation. The first petitioner is said to have submitted the proof of discharge of export obligation in the month of September, 2004 within 30 days from the date of expiry of period of obligation. However, the Customs authorities at Mumbai Port took more than 13 months in logging in the DEEC book (export part). It was on 18th November, 2005 that the Customs authorities at Mumbai Port logged in the DEEC book (export part). On that very day, the first petitioner is said to have submitted the DEEC book to the Customs authorities at JNPT which was done on 24th November, 2005. Thereafter, on 12th December, 2005, the petitioner sent the DEEC book to the Deputy Commissioner of Customs, Petrapole Customs for logging on DEEC book which is pending with him. In these circumstances, the encashment of the bank guarantee by the Assistant Commissioner of Customs, Monitoring Cell, Appraising Group VII, New Customs House, Mumbai is highly arbitrary and grossly high-handed.

4. In our view before the matter is considered further, this is a fit case where we direct the respondent No.2 to deposit an amount of Rs.35,74,330/- which they got by way of encashment of the aforesaid bank guarantee.

5. We, accordingly, direct the respondent No.2 namely the Assistant Commissioner of Customs, Monitoring Cell, Appraising Group VII, New Customs House, Mumbai to deposit a sum of Rs.35,74,330/- with the Prothonotary & Senior Master of this Court by 21st March, 2006.

6. We clarify that the amount so deposited by the respondent No.2 shall not be allowed to be withdrawn by the petitioner until the respondents are satisfied by the discharge of export obligation of the petitioner.

7. Let the writ petition come up for admission on 22nd March, 2006.

8. Reply-affidavit may be filed by the respondent No.2 by that time.

9. Stand over to 22nd March, 2006."

2. In compliance of the aforesaid order, the respondent No.2 deposited a sum of Rs.35,74,330/- with the Prothonotary & Senior Master of this court on 18th March, 2006.

3. The principal grievance raised by the petitioners in this writ petition relates to the wrongful encashment of the bank guarantee (Exhibit "C").

4. The counsel for the petitioners submits that the petitioners have today furnished the fresh bank guarantee bearing No.0393 BG 00003706 dated 19.4.2006 in the sum of Rs.35,74,330/- in the same terms of bank guarantee (Exhibit "C") wrongly invoked by the respondent No.2 and that the amount of Rs.35,74,330/- be allowed to be withdrawn from the office of the Prothonotary & Senior Master of this court.

5. Mr.R.V.Desai, senior counsel for the revenue could not justify invocation of the bank guaratnee (Exhibit "C") by letters dated 22nd February, 2006 and 10th March, 2006. He was not averse to the submission of the counsel for the petitioners that the

amount of Rs.35,74,330/- be allowed to be withdrawn by the petitioners since they have now furnished the fresh bank guarantee on the same terms of the earlier bank guarantee (Exhibit “C”).

6. We, accordingly, dispose of the writ petition by the following order:

i) The bank guarantee No.0393BG00003706 dated 19.4.2006 issued by ICICI Bank is substituted by the earlier bank guarantee (Exhibit “C”) furnished by the petitioners.

ii) The amount of Rs.35,74,330/- deposited by the respondent No.2 with the Prothonotary & Senior Master of this court on 18th March, 2006 pursuant to the order dated 16th March, 2006 is permitted to be withdrawn by the petitioners.

No costs.

The Prothonotary & Senior Master shall act on the certified copy of the order that may be produced by the petitioners.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)